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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/742,317	12/22/2000	G. Kate Harris	9-13528-63US	5874
20988	7590	10/18/2004	EXAMINER	
OGILVY RENAULT 1981 MCGILL COLLEGE AVENUE SUITE 1600 MONTREAL, QC H3A2Y3 CANADA			JAMAL, ALEXANDER	
			ART UNIT	PAPER NUMBER
			2643	
DATE MAILED: 10/18/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/742,317

Applicant(s)

HARRIS, G. KATE

Examiner

Alexander Jamal

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 09 July 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-25 is/are pending in the application.
- 4a) Of the above claim(s) 1-3,9-11 and 17-19 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 4-8,12-16 and 20-25 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 22 December 2000 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### Response to Amendment

1. As per the amendment filed 7-9-2004, examiner notes that claims 1-3,9-11, and 17-19 have been cancelled. All previous rejections have been withdrawn and new art has been applied.

### *Claim Rejections - 35 USC § 102*

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. **Claims 4-8,12-16,20-25** rejected under 35 U.S.C. 102(e) as being anticipated by Nimmagadda (6426961).

As per **claim 4**, Nimmagadda discloses a method of regulating data channel transmission (to control audible interference) of an ADSL modem during an off-hook event of POTS telephone in parallel with the modem (ABSTRACT). The method comprises the first step of determining the value of a performance quality control indicator (Col 17 lines 1-30). The next step is calculating a data transmission power level (power adjustment) using one or more of the user controlled indicators (Col 17 lines 30-

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65). The user input, along with the quality indicator (impact information) allow the system to calculate the appropriate power levels that are saved in the memory of the modem. The transmission power may be set to the appropriate power values during an offhook event (Col 5 line 50 to Col 6 line 11).

As per **claim 12**, claim is rejected for the same reasons as claim 4 rejection, and the additional step disclosed by Nimmagadda comprising monitoring the attributes for changes in states (measuring the attributes) (Col 17 lines 10-30).

As per **claim 20**, Claim 20 is rejected for the same reasons as claim 12 and the fact that a computer program to perform the steps specified by claim 12 is inherent to a modem for the purpose of interfacing with and controlling the hardware in the modem.

As per **claim 25**, claim rejected for the same reasons as claim 4 rejection. Additionally, the user may override the default modes (Col 6 lines 5-12).

As per **claims 5,16,23**, a default power value may be used in Nimmagadda's system (Col 5 lines 50-65).

As per **claims 6,13,21**, one of the performance qualities is data transmission speed (Col 17 lines 10-30).

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As per **claims 7,14,22**, The method inherently comprises the steps of providing the user means to input values for the control indicators and receiving the user's values for the purpose of allowing the user to choose which modes to operate in (ABSTRACT).

As per **claims 8,15**, the control indicators can be measured, and input by the user during an offhook event (Col 17 lines 5-35).

As per **claim 24**, claim rejected for same reasons as claims 4,5.


### **Response to Arguments**

4. Applicant's arguments with respect to claims 1-25 have been considered but are moot in view of the new ground(s) of rejection.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alexander Jamal whose telephone number is 703-305-3433. The examiner can normally be reached on M-F 8AM-5PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Curtis A Kuntz can be reached on 703-305-4708. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9306 for regular communications and 703-872-9315 for After Final communications.

AJ  
October 13, 2004

  
**GEORGE ENG**  
**PRIMARY EXAMINER**